

Parliamentary Counsel's Office

Council information for drafting, making and notification of LEPs where Council is the local plan-making authority

Procedures for LEPs where Council is the local plan-making authority (LPMA)

Notes—

- *The following information relates to instruments where the text of a local environmental plan (LEP) is being amended, whether or not the instrument also includes a map amendment.*
- *For map-only amendments, see [here](#).*

Requirements for LEP drafting and plan-making

The relevant steps and requirements for the drafting and plan-making process for LEPs where the Council is the LPMA are as follows—

1. A Council may be authorised by a gateway determination to make a proposed LEP under delegation from the Minister.
2. After community consultation (if required by the gateway determination) and forwarding of any revised planning proposal to the Minister, the Council may request—
 - PCO to draft the instrument when the LEP text is being amended, or
 - the Planning group in the Department of Planning, Housing and Infrastructure (Planning) to draft the amendment when the amendment is to LEP maps only.
3. The drafting request should use the template for drafting instructions provided by PCO/Planning and indicate whether the amendment is to the text of the LEP or maps (or both). To assist in the response to requests to draft LEPs where a Council is the LPMA, the request email should include the following—
 - the proposed name of the draft LEP, including the proposed amendment number. This should take the form [LEP name] Local Environmental Plan YYYY (Amendment No NN),
e.g. Sample Local Environmental Plan 2014 (Amendment No 1)
 - the name and contact details of the Council contact officer,
 - copies of the planning proposal, the gateway determination and any differences between the drafting request and the planning proposal, including justification—to be attached as individual documents, not included in the form of links to a website.

Note—

The email and attachments altogether should not be any larger than 20MB. Attachments in the form of generated PDFs are preferred to scanned PDFs because

the file sizes of scanned documents are usually too large.

4. A copy of the drafting request should be sent to the applicable metro or regional team of Planning. Maps should not be sent directly to PCO and are to be forwarded to the applicable metro or regional team of Planning under arrangements made by Planning with Councils for the transfer of maps by Councils.

Note—

For map procedures, see the material on Procedures for maps for standard instrument LEPs and LEPs using the standard instrument set out below.

5. **For map- only amendments—**

Where the drafting instructions declare the requested amendment to be to maps only, Planning will take responsibility for drafting and finalising these amendments and the request email should be sent to mapinstrument.drafting@dpie.nsw.gov.au and copied to the applicable metro or regional team of Planning.

6. When PCO receives a drafting request from a Council for an LEP text amendment (with or without a maps amendment), the matter will be allocated to a legislative drafter and the drafter's contact details will be sent to the Council's contact officer. Drafts will be provided to the Council contact officer by email and discussed with the Council contact officer by email, phone or meeting.
7. During the drafting process, requests by the Council for changes to draft LEPs should be given in the form of written or oral narrative comments (later confirmed in writing) and not in the form of a revised draft instrument. This enables the drafter to have a more precise understanding of the Council's intentions and policy. The Council will have an opportunity to respond to all revised drafts.
8. It is not part of PCO's drafting role to advise whether the settled instrument is consistent with the applicable gateway determination nor to advise whether re-exhibition is necessary in any case.

9. **For text amendments drafted by PCO—**

- After the form of a draft LEP is settled by the PCO drafter with the Council contact officer, the draft will be subject to final review by a senior PCO officer who will sign the opinion on legality. The LEP will be converted by PCO into a final published form suitable for signing by the delegate and publication on the NSW legislation website.
- PCO will email the Council contact officer a final PDF version of the instrument together with an opinion that the draft LEP can legally be made.

Notes—

- *An LEP should not be signed by the Council or a Council delegate unless an opinion has been given that the LEP can legally be made.*
- *PCO will not provide an opinion for map-only amendments that are drafted by Planning.*
- After an opinion is given by PCO, it is important that a draft LEP is not re-typed or changed before it is signed. If further changes are required, the matter is to be returned to PCO for preparation of a revised draft and a new opinion that the revised LEP can legally be

made. If any changes to maps associated with the opinion are made after the opinion is given, the altered maps must be forwarded to the applicable regional office of Planning, together with a new map cover sheet (MCS), for transfer to PCO.

Note—

A draft LEP must not be re-typed because the PCO draft is prepared using the PCO application that is designed for integration with, and is linked to, notification and publishing on the NSW legislation website.

Procedures for maps for standard instrument LEPs and LEPs using the standard instrument

The following procedures have been agreed to by PCO and Planning—

- PCO does not carry out checks of maps or MCS.
- From 3 May 2021, PCO no longer drafts map-only amendments.
- Where changes are made to the maps or MCS after PCO has issued an opinion that the LEP may legally be made, the LEP should be returned to PCO for a further opinion if the changes affect the text of the LEP.
- When an amending LEP drafted by PCO includes changes to adopted maps, the clause that effects the change will not contain technical information relating to the identification of the affected and new map tile sheets. Accordingly, PCO will be able to issue an opinion on the legality of the words set out in the LEP without waiting for the MCS and maps to be finalised.

The clause will make the following declaration—

4 Maps (in map & text amendments)

The maps adopted by the [name of the principal LEP] are amended or replaced, as the case requires, by the maps approved by the Minister [or “the local plan-making authority”, as appropriate] on the making of this plan.

Note—

When making the LEP, the Minister (or delegate) or the LPMA will sign the MCS that lists the maps being amended, replaced or adopted, including the map identification number for each map.

Publication of LEPs on the NSW legislation website

Arranging notification and uploading of maps

Once the LEP, and any MCS, has been signed by the Council’s delegate, the Council should email a request to the applicable metro or regional team of Planning to arrange for notification of the LEP on the NSW legislation website. The applicable team will forward the request to the Planning officer responsible for sending notification requests to PCO.

At the same time, the signed MCS and final maps to which the LEP relates will be uploaded by Planning to the Planning Portal. From 30 April 2021, the NSW legislation website no longer hosts LEP maps and instead directs users to the Planning Portal to view maps for an LEP.

Notes—

- *The LEP that will be notified is the one held by PCO for which the opinion was given. LEPs must not be re-typed or altered in any way. If changes to the LEP are*

- required, contact PCO. The MCS and maps are the responsibility of the LPMA.
- For map-only amending LEPs, no opinion is issued by PCO and the LEP that will be notified is the one submitted for notification by the Planning officer responsible for sending notification requests to PCO.

Timing of notification

The LEP will generally be notified on a Friday following the established weekly legislation cycle. However, urgent or delayed notification can be arranged at other times if required. LEPs usually take effect on notification, unless otherwise specified.

For normal notification on a Friday, the request for notification should be emailed to the applicable regional office of Planning by 12 noon on the Tuesday of that week. Requests for special notification should be made by telephone to the regional office as soon as possible, and any request by Planning to PCO for special notification should be made no later than 1pm on the day in question.

What to include with a notification request

The email request by Council to the applicable metro or regional office of Planning should include the following information—

- the full name of the LEP,
- PCO's drafting file reference, where PCO is the drafter (which is on the top of the opinion relating to that LEP or on the bottom left-hand side of the LEP itself),
- the name and position or office of the delegate who signed the LEP and MCS (if applicable).

The following documents should be attached to the email request—

- the front page of the signed LEP,
- the opinion relating to the LEP, where PCO is the drafter,
- the complete signed MCS, where applicable.

Note—

The maps that relate to an MCS must be supplied to the applicable metro or regional team of Planning.

Updating the legislation website—principal LEP

Following notification of the making of the LEP, PCO will update the NSW legislation website, including incorporating the changes made by any amending LEP into the principal LEP being amended. The legislation website is usually updated within 3 working days after an amending or principal instrument is notified.

From 30 April 2021, PCO no longer updates map indexes with the relevant new maps.

Council inquiries about draft LEPs

Inquiries for PCO by Councils about draft LEPs should be sent in the first instance to parliamentary.counsel@pco.nsw.gov.au and marked for the attention of the 'Manager, LEP drafting program'.

Inquiries about maps and other matters should be directed to the applicable regional office of Planning.

Parliamentary Counsel

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